

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DEREK CARDER, an individual,  
MARK BOLLETER, an individual,  
DREW DAUGHERTY, an individual, and  
ANDREW KISSINGER, an individual, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

V.

CONTINENTAL AIRLINES, INC., et al.,

Defendants.

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Case No. 4:09-cv-03173

## **NOTICE REGARDING CASE STATUS**

Defendant Continental Airlines, Inc. (“Continental”) files this Notice Regarding Case

Status:

On November 30, 2009, this Court entered an order granting in part Continental’s Motion to Dismiss. (See Docket Entry No. 43.) On January 6, 2010, the Court entered an order granting Plaintiffs’ Motion for Certificate of Appealability of the Court’s November 30, 2009 order with respect to Plaintiffs’ allegations concerning freedom from a hostile work environment under USERRA. (See Docket Entry No. 54.) On January 21, 2010, this Court granted Continental’s Motion to Stay Pending Resolution of Plaintiffs’ Interlocutory Appeal and entered an order “that all further proceedings in this case are stayed pending resolution of Plaintiffs’ appeal of the Court’s November 30, 2009 Order.” (See Docket Entry No. 60.)

On February 18, 2010, the Fifth Circuit entered an order granting leave to appeal from this Court's interlocutory order dated November 30, 2009. Plaintiffs subsequently filed a Notice of Appeal in this Court on February 24, 2010. (See Docket Entry No. 63.) As a result, the Fifth Circuit docketed a second, redundant appeal of this case.

On April 19, 2010, the Fifth Circuit dismissed the redundant appeal filed February 24, 2010, for want of prosecution. However, in the cover letter accompanying the order of dismissal, the Fifth Circuit stated: **“P.S. to Counsel: The case remains open as to the appeal granted on February 18, 2010.”** See Order and Cover Letter, attached as Exhibit A. Because Plaintiffs’ initial appeal of this Court’s November 30, 2009 order is still pending before the Fifth Circuit, all proceedings in this case remain stayed under the terms of the Court’s order. (See Docket Entry No. 60.)

Respectfully submitted,

/s/ Flyn L. Flesher  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of May, 2010, a copy of the foregoing pleading was filed electronically with the Clerk of Court to be served by operation of the Court’s electronic filing system to all counsel of record.

/s/ Flyn L. Flesher  
Flyn L. Flesher